

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LARRY L FOX
Claimant

APPEAL NO. 10A-UI-08769-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 05/16/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 11, 2010, reference 01, which denied benefits based upon his separation from West Liberty Foods, LLC. After due notice was issued, a telephone hearing was held on August 5, 2010. The claimant participated personally. The employer participated by Ms. Nicki Bruno, human resource generalist; Ms. Maria Bozaan, human resource manager; and Mr. Trevor Fuhlman, production supervisor.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Larry Fox was employed by West Liberty Foods LLC from October 12, 2009, until May 14, 2010, when he quit employment by walking off the job. The claimant was officially separated from employment on May 20, 2010, after the employer declined to reinstate Mr. Fox.

Mr. Fox left his employment during the work shift on May 14 after being admonished by his immediate supervisor at the beginning of the work shift. Department employees had been informed that work uniforms would be supplied by a new company. Employees were instructed to bring in their old uniforms and to exchange them for new uniforms on May 14, 2010. When Mr. Fuhlman began the process of distributing new uniforms and retrieving the old ones, he noted that Mr. Fox had already obtained his new uniforms. The claimant was summoned back to the area, where Mr. Fuhlman inquired who had given Mr. Fox authorization to take the new uniforms. Mr. Fuhlman explained the supervisor's need to account for the uniform. The claimant, who believed that he had done no wrong, stated, "Yeah...Yeah..." and rolled his eyes at the supervisor's statement. Mr. Fuhlman, in turn, said that he believed that Mr. Fox had an "attitude" and made a reference to speaking to Mr. Fox more about the matter later.

After returning to his work station, Mr. Fox became increasingly upset, believing that Mr. Fuhlman's statements and conduct were uncalled for and should not have been made in the

presence of other employees. Mr. Fox then changed back into his personal clothing, punched out, and left the premises without the authorization of his supervisor or of a superintendent who was on duty. Upon leaving, Mr. Fox encountered Mr. Fuhlman. Although Mr. Fuhlman warned the claimant that leaving without authorization would be considered to be "job abandonment," Mr. Fox left the premises.

Subsequently, the matter was investigated by the human resource department and a decision was made not to reinstate or rehire Mr. Fox, based upon what the employer considered to be his job abandonment on May 14, 2010.

It is the claimant's position that his supervisor did not like him and had treated the claimant differently than other employees by not conversing with the claimant as much and by placing his paycheck on a table instead of handing it to him in the past. It is the claimant's further position that he felt "threatened" by Mr. Fuhlman and believed that it was necessary to leave the premises at that time because feared that Mr. Fuhlman might cause the claimant harm in some manner.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Mr. Fox left his employment during the work shift of May 14, 2010, without authorization, based upon his belief that his immediate supervisor had become unreasonably angry and abusive to him in the presence of other employees because he had exchanged his uniforms without Mr. Fuhlman's knowledge. Mr. Fox maintains that he was required to leave the work site at that time because he felt "threatened" and believed that he had no reasonable alternatives. The claimant thus maintains that he left employment at that time due to detrimental or intolerable working conditions.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to an employer for leaving is not a subjective test as to whether the employee themselves feel that they have good cause but an objective test as to whether a reasonable person would have quit or left under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988). See also O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes, based upon the totality of the evidence in the record, that Mr. Fox has not established that the working conditions on the evening of May 14, 2010, were so detrimental or intolerable that he was required to leave without authorization during the work shift. The evidence in the record shows that a superintendent was on duty that evening and that Mr. Fox could have brought his concerns to the superintendent had he chosen to do so. Thus, a reasonable alternative was available to Mr. Fox. The evidence in the record also

shows that Mr. Fuhlman's comments to the claimant were made in reaction to the claimant's demeanor when told by a supervisor that he should have waited to exchange the uniforms. The evidence also shows that when the company investigated the matter, Mr. Fox had stated that he had previously gotten along well with Mr. Fuhlman. The administrative law judge thus concludes that Mr. Fox's fear of physical retaliation by his supervisor was unfounded.

Although Mr. Fox's reasons for leaving may have been good from his personal viewpoint, the claimant has not met his burden of proof to establish that his quitting was for good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated June 11, 2010, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw